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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 72

UNITED STATES OF AMERICA, APPELLANT,

vs.

GEORGE DONALD SHIREY

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FILED MAY 28, 1958
PROBABLE JURISDICTION NOTED OCTOBER 13, 1958

Supreme Court of the United States

OCTOBER TERM, 1958

No. 72

UNITED STATES OF AMERICA, APPELLANT,

vs.

GEORGE DONALD SHIREY

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

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[fol. 1] **IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

No. 12527

18 USC 214 Offer to Procure Appointive Public Office

UNITED STATES OF AMERICA

vs.

GEORGE DONALD SHIREY

INFORMATION—filed July 23, 1954

THE UNITED STATES ATTORNEY CHARGES:

On or about the 5th day of December 1953, in the City of York, Middle District of Pennsylvania, and within the jurisdiction of this Court,

GEORGE DONALD SHIREY,

in violation of the Act of Congress, June 25, 1948, c 645, Sec. 1, 62 Stat. 694, 18 U.S.C. Sec. 214, did KNOWINGLY, WILFULLY and UNLAWFULLY offer or promise to S. WALTER STAUFFER, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania.

J. JULIUS LEVY
United States Attorney
Middle District of Pennsylvania

Dated: July 23, 1954.

[fol. 2] • • •

[fol. 3] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

• • • •

NOTICE OF MOTION TO DISMISS THE INFORMATION—filed August 19, 1954

(omitted in printing)

• • • •

AFFIDAVIT OF SERVICE (omitted in printing)

• • • • •

[fol. 4] • • •

[fol. 5] IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(Title omitted)

MOTION TO DISMISS THE INFORMATION—filed August 19, 1954

The defendant moves that the information be dismissed on the following ground:

The information does not state facts sufficient to constitute an offense against the United States.

HERBERT B. COHEN
LAVERE C. SENFT

By Herbert B. Cohen
56 S. George Street
York, Pennsylvania

[fol. 6] • • •

[fol. 7] IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

• • • •

No. 12527 Criminal

UNITED STATES OF AMERICA

v.

GEORGE DONALD SHIREY

• • • •

[fol. 8] MEMORANDUM AND ORDER GRANTING DEFENDANT'S MOTION TO DISMISS INFORMATION—
March 17, 1958

This is a motion to dismiss the Information because the Information does not state facts sufficient to constitute an offense against the United States of America.

The Information charges that:

> "On or about the 5th day of December 1953, in the City of York, Middle District of Pennsylvania, and within the jurisdiction of this Court, GEORGE DONALD SHIREY, in violation of the Act of Congress, June 25, 1948, c. 645, Sec. 1, 62 Stat. 694, 18 U.S.C. Sec. 214, did KNOWINGLY, WILFULLY and UNLAWFULLY offer or promise to S. WALTER STAUFFER, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania."

As above indicated, this Information was brought under 18 U.S.C. § 214 which reads as follows:

> "Offer to procure appointive public office
>
> "Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use

[fol. 9] any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

The counterpart to this statute appears in the next section of the Code (18 U.S.C. § 215) and reads as follows:

> "Acceptance or solicitation to obtain appointive public office.
>
> "Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

No case construing Section 214 has been brought to our attention, nor has our independent search disclosed any.

In United States v. Hood et al., 343 U.S. 148 (1952), appellees were indicted for violating 18 U.S.C. § 215, which, as above indicated, makes it a misdemeanor for anyone to solicit or receive contributions in consideration of the promise of support or use of influence in obtaining for any person "any appointive office or place under the United States." The trial court dismissed certain counts of the indictment which alleged the solicitation of contributions in return for promises to use influence to obtain offices which were not in existence at the time of the solicitation or the return of the indictment but which the President had been authorized to create under the Defense Production Act of 1950. The order of dismissal was appealed by the Government direct to the Supreme Court under the Criminal Appeals Act, 18 [fol. 10] U.S.C. (Supp. IV) § 3731. The Supreme Court in reversing stated, inter alia:

> "We think the District Court was wrong. The statute is plainly broad enough on its face to cover the sale of influence in connection with an office which had been authorized by law and which, at

the time of the sale, might reasonably be expected to be established. That was the situation here and we do not have to go further to say whether the words will cover the sale of an office which is purely the creature of the seller's fancy.

"The evil at which the statute is directed is the operation of purchased, and thus improper, influence in determining the occupants of federal office. But in attacking that evil, Congress outlawed not the use of such influence, but the solicitation of its purchase, the peddling of the forbidden wares. As is not uncommon in criminal legislation, Congress, in order to strike at the root, made the scope of the statute wider than the immediate evil. Even judges need not be blind to the fact of political life that it helps in influencing political appointments to be forehanded with a recommendation before an office is formally created. Certainly it was not unreal for Congress to believe that the sale of influence in anticipation of jobs was equally damaging to the proper operation of the federal service and to take steps to prevent it. It did so in this Act. Nothing has been suggested, either by the sparse legislative history or by prior judicial construction, to restrain us from giving effect to the obvious, ordinary reading of the statute. It is pressed upon us that criminal statutes are to be strictly construed. But this does not mean that such legislation 'must be construed by some artificial and conventional rule.' *United States v. Union Supply Co.*, 215 U.S. 50, 55. We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in.

"This Act penalized corruption. It is no less corrupt to sell an office one may never be able to deliver than to sell one he can. Dealing in futures also discredits the processes of government. There is no indication that this statute punishes delivery of the fruit of the forbidden transaction—it forbids [fol. 11]the sale. The sale is what is here alleged. Whether the corrupt transaction would or could ever be performed is immaterial. We find no basis for

allowing a breach of warranty to be a defense to corruption."

In the instant case we are not dealing in a sale, rather an attempted purchase.

Sections 214 and 215, supra, first appear, substantially in pari materia, as a single act, approved December 11, 1926, 44 Stat. 918, H.R. 10739, Public, No. 525, as follows:

"An Act To prevent purchase and sale of public office.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.

"SEC. 2. It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.

"SEC. 3. Anyone convicted of violating this Act shall be punished by imprisonment of not more than one year, or by a fine of not more than $1,000, or by both such fine and imprisonment.

"SEC. 4. All Acts and parts of Acts inconsistent herewith are hereby repealed."

[fol. 12] This is a criminal statute and with the reservations made in United States v. Hood, supra, must be strictly construed. United States v. Five Gambling Devices, 7 Cir., Slip Opinion February 18, 1958. The construction of a statute should be with reference both to the history of the legislation and to other sections of

the law with which it is in pari materia. Gutschalk v. Peck, D.C.N.D. Ohio, 1919, 261 Fed. 212.

As above indicated, Sections 214 and 215 first appeared in 1926 as a single act. The soliciting section (215) specifically mentions "political contribution." No such characterization is found in Section 214 under which this Information is drawn. The Information here alleges that the defendant offered on promised to donate $1,000 a year to the Republican Party. The section in question specifically limits the payee to "any person, firm or corporation." A political party has been defined as a body of persons associated for the purpose of promoting certain views, opinions, or principles with respect to government. 29 C.J.S. Political Parties § 84. It is in no sense of the word a person, a firm, or a corporation. Had the Congress so desired, or intended, it could have added to the words "person, firm or corporation" the further words "or political party."

Having in mind the obvious evil at which both Section 214 and Section 215 are directed, namely, the traffic in [fol. 13] federal offices, it is interesting to note that only in § 215 (solicitation) was Congress concerned about a political contribution. The two sections have stood with no substantial change for nearly thirty-two years. It is not, in my judgment, the province of the courts to attempt to rationalize this apparent deliberate omission.

In the instant case the Information does not charge that the offer was to contribute to the individual named therein, a Congressman; the offer was made to the individual to contribute to the Republican Party. Considering Sections 214 and 215 as a whole, and having in mind the rules of construction above referred to, particularly in the light of the Hood case, supra, it is my conclusion that the Information does not state facts sufficient to constitute an offense against the United States of America.

Motion to dismiss the Information will be granted.

FREDERICK V. FOLLMER
United States District Judge

March 17, 1958

[fol. 14] ORDER

NOW, to wit., March 17, 1958, in accordance with Memorandum this day filed, It is Ordered and Decreed that defendant's motion to dismiss the Information be and the same is hereby granted.

FREDERICK V. FOLLMER
United States District Judge

[fol. 15] • • •

[fol. 16] IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(Title omitted)

• • • •

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES—filed April 14, 1958

I. Notice is hereby given that the United States appeals to the Supreme Court of the United States from the order of March 17, 1958, dismissing the information charging the defendant with a violation of 18 U.S.C. 214.

The appeal is taken pursuant to 118 U.S.C. 3731.

II. The clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme Court of the United States and include in said transcript the following:

1. Transcript of docket entries
2. Information
3. Motion to dismiss
4. Memorandum opinion dated March 17, 1958, sustaining the motion to dismiss
5. Order dated March 17, 1958, dismissing the information
6. This notice of appeal

III. The following question is presented by this appeal:

Whether an offer or promise to a member of Congress to donate money to a political party in consideration of the use or promise to use influence to procure for the defendant an appointive place under the United States is within the proscription of 18 U.S.C. 214.

ROBERT J. HOURIGAN
United States Attorney

[fol. 17] PROOF OF SERVICE (Omitted in printing)

[fol. 18] IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

(Title omitted)

* * * *

STATEMENT OF DOCKET ENTRIES

1. Criminal Information: Vio: 18 USC., Sec. 214.
Filed July 23, 1954

2. Not Arraigned.

3. Motion to Dismiss the Information.
Filed Aug. 19, 1954

4. Memorandum and Order Granting Defendant's Motion to Dismiss the Information.
Filed Mar. 17, 1958.

5. Notice of Appeal to the Supreme Court of the United States.

Dated April 14, 1958
Attest: T. H. CAMPION
Clerk.

* * * *

[fol. 19] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 20] SUPREME COURT OF THE UNITED STATES

No. 72, October Term, 1958

UNITED STATES OF AMERICA,
Appellant,

vs.

GEORGE DONALD SHIREY

APPEAL from the United States District Court for the Middle District of Pennsylvania.

ORDER NOTING PROBABLE JURISDICTION—October 13, 1958

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted and the case is transferred to the summary calendar.

U. S. GOVERNMENT PRINTING OFFICE 1958 483294 581

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SUPREME COURT, U. S.

No. 72

Office - Supreme Court, U.S.
FILED
MAY 23 1958
JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1957

UNITED STATES OF AMERICA, *Appellant*

v.

GEORGE DONALD SHIREY

Appeal from the United States District Court for the Middle District of Pennsylvania

---

JURISDICTIONAL STATEMENT

J. LEE RANKIN,
Solicitor General,

MALCOLM ANDERSON,
Assistant Attorney General,

BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys,
Department of Justice,
Washington 25, D. C.

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STATUTES:

Act of December 11, 1926, 44 Stat. 918:	
Sec. 1	4, 5
Sec. 2	4, 5
Act of September 13, 1951, 65 Stat. 320	7-8
Revised Statutes, Sec. 1	4
1 U.S.C. 1	4
18 U.S.C. 214	2, 4, 5
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MISCELLANEOUS:

65 Cong. Rec.	
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1409-1412	6
67 Cong. Rec. 4942	6
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H. Rep. No. 1366, 69th Cong., 1st Sess., June 3, 1926	6-7
H. Rep. No. 784, 82d Cong., 1st Sess., p. 2	8
S. Rep. No. 1036, 79th Cong., 2d Sess., March 12, 1946	8
S. Rep. No. 2, 80th Cong., 1st Sess., January 15, 1947	8
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In the Supreme Court of the United States

OCTOBER TERM, 1957

No.

UNITED STATES OF AMERICA, *Appellant*

v.

GEORGE DONALD SHIREY

Appeal from the United States District Court for the Middle District of Pennsylvania

---

JURISDICTIONAL STATEMENT

OPINION BELOW

The memorandum opinion of the District Court is set forth in the Appendix, *infra*, pp. 1a-6a. It is not reported.

JURISDICTION

The order of the District Court dismissing the information as to appellee, on the ground that the facts alleged did not constitute an offense under 18 U.S.C. 214, was entered on March 17, 1958 (Appendix, *infra*, p. 6a). Notice of appeal to this Court was filed in the District Court on April 14, 1958. The jurisdiction of this Court to review on direct appeal a judgment

dismissing an information, based on a construction of the statute on which the information is founded, is conferred by 18 U.S.C. 3731.

STATUTE INVOLVED

18 U.S.C. 214:

> Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

QUESTION PRESENTED

Whether 18 U.S.C. 214 proscribes an offer or promise to a congressman to make a payment to a political party, in return for the use of influence to procure an appointment to a federal position.

STATEMENT

The information charged that appellee, in violation of 18 U.S.C. 214, on or about December 5, 1953, did wilfully "offer or promise to S. Walter Stauffer, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania." The District Court dismissed the information as not stating facts sufficient to constitute an offense under 18 U.S.C. 214, *supra*.

The court, noting that the statute prohibits an offer of money or thing of value "to any person, firm, or

corporation", held that the Republican Party is not a "person, firm, or corporation". It also noted that, whereas Section 214 does not mention political contributions, the counterpart section (now 18 U.S.C. 215) does prohibit solicitation or receipt "either as a political contribution, or for personal emolument, any money or thing of value" in consideration of the promise to use influence.

THE QUESTION IS SUBSTANTIAL

The holding of the court below that present federal statutes do not prohibit a person from endeavoring to obtain influence to secure an appointive office by offering to make contributions to a political party presents a question of public importance, warranting review by this Court. We believe that the decision below is incorrect and contrary to the intent of Congress.

1. To the extent that the opinion holds that the indictment did not charge an offer to any "person, firm, or corporation", it is manifestly in error. The information charges that appellee offered or promised to *Congressman Stauffer* donations of $1,000 per year to the Republican Party. The question is thus whether the offer to a person to give money to his political party is an offer of *"a thing of value"* to that person. In our view, the contribution would clearly be a "thing of value", under the statute, not merely to the Party, but to a congressman, in heightening the congressman's prestige as a source of contributions, as well as in obtaining funds a part of which might be available for a future personal campaign of the congressman. The importance of party funds to a person seeking office as a representative of that party hardly needs elaboration.

Moreover, even if the statute is read as prohibiting only an offer to give *money* to any "person, firm, or corporation"—here, the offer to give money to the Republican Party—the status of a political party as a "person, firm, or corporation" seems clear. At the time Sections 214 and 215 were enacted as Sections 1 and 2 of the Act of December 11, 1926, Section 1 of the Revised Statutes provided:

> In determining the meaning of any Act or resolution of Congress, passed subsequent to February 25, 1871, words importing the singular number may extend and be applied to several persons or things; * * * the word "person" may extend and be applied to partnerships and corporations, * * * unless the context shows that such words were intended to be used in a more limited sense; * * *.

Title 1, U.S.C., was enacted into positive law in 1947, a year before Title 18 was similarly enacted, Section 1 of Title 1 carried forward the provision that "words importing the singular include and apply to several persons, parties, or things", and added the provision that "the words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals," "unless the context indicates otherwise." In view of the definition in the Revised Statutes, Section 1 of Title 1 of the United States Code, and the legislative history of the Act of December 11, 1926 (which first enacted the provision which is now Section 214), a reasonable interpretation of the word "person" in the phrase "any person, firm, or corporation" is that it includes persons associated together, *e.g.*, a political party. This becomes clear under the definition in 1 U.S.C. 1, which specifically includes "associations."

The District Court itself defined a political party as "a body of persons *associated* for the purpose of promoting certain views, opinions, or principles with respect to government" (emphasis added) (Appendix, *infra*, p. 5a).

2. The District Court also relied on the fact that the section here involved, 18 U.S.C. 214, was originally enacted as part of a statute (44 Stat. 918) which read as follows:

> * * * That it shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.
>
> Sec. 2. It shall be unlawful to solicit or receive from anyone whatsover, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.

The court assumed that the inclusion of the term "political contribution" in Section 2 (dealing with *solicitations*) tended to negate an intention to include *offers* of such contributions in Section 1. But there is a difference between the situation of the offeror and of the solicitor which made advisable the spelling out of the intention in the case of the solicitor, and not of the offeror. An offeror seeking to *purchase* a position would always be acting for a specific personal motive and could not claim that what he was doing

was for some general public good. On the other hand, the solicitor of funds could be in a position to claim that he was not seeking money for himself, but merely engaging in general political activity. Indeed, the legislative history of the statute shows that Congress was directing its attention to the promise of federal office, particularly post office positions, in return for contributions to the party (65 Cong. Rec. 1409-1412). Congressman Stevenson had reported of one solicitor (65 Cong. Rec. 820), "Oh, he said he was collecting this money for a campaign fund." It is therefore understandable that Congress found it appropriate to spell out specifically, as to solicitors, that it was prohibiting solicitation "either as a political contribution, or for personal emolument." But nothing in the history indicates that the precaution of specifically including a political contribution as a "thing of value" to a solicitor or recipient was to be applied in a different section as a limitation, rather than clarification, of the otherwise inclusive scope of the term "thing of value" with respect to an offeror. To the contrary, in the congressional discussions in the years preceding the enactment of the instant legislation, while references to solicitations of pay for offices were naturally in numerical preponderance, it was noteworthy that Congressman Wurzbach spoke not alone of the solicitors of campaign contributions but also of those who made the contributions (67 Cong. Rec. 4942): "Many were 'called' to contribute, and many did contribute with the inspired hope that they would be among the 'chosen elect'." Moreover, the purpose of the instant enactment was stated in broad terms in the House committee report (H. Rep. No. 1366, 69th Cong., 1st Sess., June 3, 1926):

> This bill seeks to punish the purchase and sale of public offices. Certain Members of Congress have brought to the attention of the House both by speeches on the floor and statements before the Judiciary Committee a grave situation, disclosing corruption in connection with postal appointments in Mississippi and South Carolina. It is believed that this bill will prevent corrupt practices in connection with patronage appointments in the future.

This Court recently stated, in rejecting a narrow construction of the statute designed to exclude from the offense of solicitation the case of jobs not yet established (*United States* v. *Hood*, 343 U.S. 148, 150-151):

> The evil at which the statute is directed is the operation of purchased, and thus improper, influence in determining the occupants of federal office. * * * Nothing has been suggested, either by the sparse legislative history or by prior judicial construction, to restrain us from giving effect to the obvious, ordinary reading of the statute. It is pressed upon us that criminal statutes are to be strictly construed. But this does not mean that such legislation "must be construed by some artifical and conventional rule." *United States* v. *Union Supply Co.*, 215 U.S. 50, 55. We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in.

That same rationale applies here.[1]

---

[1] The language of recent congressional reports and of administrators further attests the meaning of the language concerning political contributions as being merely explanatory of "things of value" rather than in limitation of it. Thus, when Congress, in 1951, amended Section 2 (concerning solicitation and receipt

CONCLUSION

It is respectfully submitted that the Court should note jurisdiction of this appeal.

J. LEE RANKIN,
Solicitor General.

MALCOLM ANDERSON,
Assistant Attorney General.

BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys.

MAY 1958.

---

of bribes) to prohibit obtaining of fees by employment agencies (65 Stat. 320), the committee reports, in describing the section, did not separately mention political contributions as something to be distinguished from a thing of value, but described the law as follows: "Under existing law it is a criminal offense for anyone to solicit or receive any money or thing of value * * *" (S. Rep. No. 3, 82d Cong., 1st Sess., p. 1; H. Rep. No. 784, 82d Cong., 1st Sess., p. 2). In 1946, 1947, and 1949, with respect to a similar proposed amendment, similar language appeared (S. Rep. No. 1036, 79th Cong., 2d Sess., March 12, 1946; S. Rep. No. 2, 80th Cong., 1st Sess., January 15, 1947; S. Rep. No. 7, 81st Cong., 1st Sess., January 24, 1949). The same treatment of the political contribution language appeared in the speech of Senator McCarran, of the Senate Judiciary Committee, in introducing the 1951 amendment on the floor of the Senate (97 Cong. Rec. 10682), in the letter of the President of the Civil Service Commission to the Senate, dated December 14, 1945 (reproduced in Senate Report, No. 3, *supra*), and in the letter of the Executive Director of the Civil Service Commission to the House Judiciary Committee, dated February 20, 1951 (reproduced in H. Rep. No. 784, *supra*). And see the even broader summary, "pay or offer or promise to pay for the use of influence", in the letter of the Attorney General to the Senate, dated February 19, 1946, in S. Rep. No. 3, *supra*.

APPENDIX

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

* * * * *

No. 12527 CRIMINAL

UNITED STATES OF AMERICA

v.

GEORGE DONALD SHIREY

Memorandum

This is a motion to dismiss the Information because the Information does not state facts sufficient to constitute an offense against the United States of America. The Information charges that:

> "On or about the 5th day of December 1953, in the City of York, Middle District of Pennsylvania, and within the jurisdiction of this Court, GEORGE DONALD SHIREY, in violation of the Act of Congress, June 25, 1948, c. 645, Sec. 1, 62 Stat. 694, 18 U.S.C. Sec. 214, did KNOWINGLY, WILFULLY and UNLAWFULLY offer or promise to S. WALTER STAUFFER, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania."

As above indicated, this Information was brought under 18 U.S.C. § 214 which reads as follows:

> "Offer to procure appointive public office
>
> "Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall

be fined not more than $1,000 or imprisoned not more than one year, or both."

The counterpart to this statute appears in the next section of the Code (18 U.S.C. § 215) and reads as follows:

"Acceptance or solicitation to obtain appointive public office.

"Whoever solicits or receives, either as political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

No case construing Section 214 has been brought to our attention, nor has our independent search disclosed any.

In United States v. Hood et al., 343 U.S. 148 (1952), appellees were indicted for violating 18 U.S.C. § 215, which, as above indicated, makes it a misdemeanor for anyone to solicit or receive contributions in consideration of the promise of support or use of influence in obtaining for any person "any appointive office or place under the United States." The trial court dismissed certain counts of the indictment which alleged the solicitation of contributions in return for promises to use influence to obtain offices which were not in existence at the time of the solicitation or the return of the indictment but which the President had been authorized to create under the Defense Production Act of 1950. The order of dismissal was appealed by the Government direct to the Supreme Court under the Criminal Appeals Act, 18 U.S.C. (Supp. IV) §3731. The Supreme Court in reversing stated. inter alia:

"We think the District Court was wrong. The statute is plainly broad enough on its face to cover

the sale of influence in connection with an office which had been authorized by law and which, at the time of the sale, might reasonably be expected to be established. That was the situation here and we do not have to go further to say whether the words will cover the sale of an office which is purely the creature of the seller's fancy.

"The evil at which the statute is directed is the operation of purchased, and thus improper, influence in determining the occupants of federal office. But in attacking that evil, Congress outlawed not the use of such influence, but the solicitation of its purchase, the peddling of the forbidden wares. As is not uncommon in criminal legislation, Congress, in order to strike at the root, made the scope of the statute wider then the immediate evil. Even judges need not be blind to the fact of political life that it helps in influencing political appointments to be forehanded with a recommendation before an office is formally created. Certainly it was not unreal for Congress to believe that the sale of influence in anticipation of jobs was equally damaging to the proper operation of the federal service and to take steps to prevent it. It did so in this Act. Nothing has been suggested, either by the sparse legislative history or by prior judicial construction, to restrain us from giving effect to the obvious, ordinary reading of the statute. It is pressed upon us that criminal statutes are to be strictly construed. But this does not mean that such legislation 'must be construed by some artificial and conventional rule.' *United States* v. *Union Supply Co.*, 215 U.S. 50, 55. We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in.

"This Act penalized corruption. It is no less corrupt to sell an office one may never be able to

deliver than to sell one he can. Dealing in futures also discredits the processes of government. There is no indication that this statute punishes delivery of the fruit of the forbidden transaction—it forbids the sale. The sale is what is here alleged. Whether the corrupt transaction would or could ever be performed is immaterial. We find no basis for allowing a breach of warranty to be a defense to corruption."

In the instant case we are not dealing in a sale, rather an attempted purchase.

Sections 214 and 215, supra, first appear, substantially in pari materia, as a single act, approved December 11, 1926, 44 Stat. 918, H. R. 10739, Public, No. 525, as follows:

"An Act To prevent purchase and sale of public office.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That it shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.

"SEC. 2. It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.

"SEC. 3. Anyone convicted of violating this Act shall be punished by imprisonment of not more

than one year, or by a fine of not more than $1,000. or by both such fine and imprisonment.

"SEC. 4. All Acts and parts of Acts inconsistent herewith are hereby repealed."

This is a criminal statute and with the reservations made in United States v. Hood, supra, must be strictly construed. United States v. Five Gambling Devices, 7 Cir., Slip Opinion February 18, 1953. The construction of a statute should be with reference both to the history of the legislation and to other sections of the law with which it is in pari materia. Gutschalk v. Peck, D.C.N.D. Ohio, 1919, 261 Fed. 212.

As above indicated, Sections 214 and 215 first appeared in 1926 as a single act. The soliciting section (215) specifically mentions "political contribution." No such characterization is found in Section 214 under which this Information is drawn. The Information here alleges that the defendant offered or promised to donate $1,000. a year to the Republican Party. The section in question specifically limits the payee to "any person, firm or corporation." A political party has been defined as a body of persons associated for the purpose of promoting certain views, opinions, or principles with respect to government. 29 C.J.S. Political Parties § 84. It is in no sense of the word a person, a firm, or a corporation. Had the Congress so desired, or intended, it could have added to the words "person, firm or corporation" the further words "or political party."

Having in mind the obvious evil at which both Section 214 and Section 215 are directed, namely, the traffic in federal offices, it is interesting to note that only in § 215 (solicitation) was Congress concerned about a political contribution. The two sections have stood with no substantial change for nearly thirty-two years. It is not, in my judgment, the province of the courts to attempt to rationalize this apparent deliberate omission.

In the instant case the Information does not charge that the offer was to contribute to the individual named therein, a Congressman; the offer was made to the individual to contribute to the Republican Party. Considering Sections 214 and 215 as a whole, and having in mind the rules or construction above referred to, particularly in the light of the Hood case, supra, it is my conclusion that the Information does not state facts sufficient to constitute an offense against the United States of America.

Motion to dismiss the Information will be granted.

(s) FREDERICK V. FOLLMER
United States District Judge

March 17, 1958

Order

NOW, to wit, March 17, 1958, in accordance with Memorandum this day filed, It is Ordered and Decreed that defendant's motion to dismiss the Information be and the same is hereby granted.

(s) FREDERICK V. FOLLMER
United States District Judge

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In the Supreme Court of the United States

OCTOBER TERM, 1958

UNITED STATES OF AMERICA, APPELLANT

v.

GEORGE DONALD SHIREY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

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UNITED STATES OF AMERICA, APPELLANT

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BRIEF FOR THE UNITED STATES

OPINION BELOW

The memorandum opinion of the District Court (R. 3–7) is not reported.

JURISDICTION

The order of the District Court dismissing the information as to appellee, on the ground that the facts alleged did not constitute an offense under 18 U. S. C. 214, was entered on March 17, 1958 (R. 8). Notice of appeal to this Court was filed in the District Court on April 14, 1958 (R. 8–9). This Court noted probable jurisdiction on October 13, 1958 (R. 10). The jurisdiction of this Court to review on direct appeal a judgment dismissing an information, based on a con-

struction of the statute on which the information is founded, is conferred by 18 U. S. C. 3731.

STATUTES INVOLVED

18 U. S. C. 214:

> Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

18 U. S. C. 215:

> Whoever solicits or receives, either as a political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.
>
> Whoever solicits or receives any thing of value in consideration of aiding a person to obtain employment under the United States either by referring his name to an executive department or agency of the United States or by requiring the payment of a fee because such person has secured such employment shall be fined not more than $1,000, or imprisoned not more than one year, or both. This section shall not apply to such services rendered by an employment agency pursuant to the written request of an executive department or agency of the United States.

QUESTION PRESENTED

Whether 18 U. S. C. 214 proscribes an offer or promise to a congressman to make payments to a political party in return for the use of influence to procure an appointment to a federal position.

STATEMENT

The information charged that appellee, in violation of 18 U. S. C. 214, *supra,* on or about December 5, 1953, did wilfully "offer or promise to S. Walter Stauffer, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania" (R. 1). The District Court dismissed the information as not stating facts sufficient to constitute an offense under 18 U. S. C. 214 (R. 7). The court stated that the information "does not charge that the offer was to contribute to the individual named therein, a Congressman; the offer was made to the individual to contribute to the Republican Party" (R. 7). It construed the statute to require that the ultimate recipient of the money, the Republican Party, rather than the congressman receiving the offer or promise, must be a "person, firm, or corporation," and held that the Republican Party is not "a person, firm, or corporation" (R. 7). In addition, the court adverted to the fact that the "counterpart" section (18 U. S. C. 215), relating to a solicitor of an offer, specifically mentions a political contribution as money "or thing of value"; the court deemed this an indica-

tion that a political contribution was excluded from the phrase "money or thing of value" as used in the instant provision relating to the offerer of such a contribution (R. 4, 7).

SUMMARY OF ARGUMENT

The District Court's dismissal of the information charging that appellee made an offer to a congressman to donate $1,000 a year to the Republican Party for the use of influence to obtain a postmastership involved a two-fold construction of the statute, which we believe to be erroneous in both aspects. The court held that (1) where an offer is made to an individual to pay money to someone else, the ultimate payee (as distinguished from the immediate offeree) must be the "person, firm, or corporation" named in the statute, and that here the ultimate payee, the Republican Party, did not come within that category; and (2) even if there was here an offer to a "person" (the congressman), the offer to the congressman to make contributions to the Party was not a "thing of value" under the statute.

I.

The offer to the congressman was within the proscription of the statute as an offer *to him* of something "of value" to him.

A. The phrase "to any person, firm, or corporation" in Section 214 is reasonably read as defining only the person (or entity) to whom the offer or promise is made (here, the congressman) and who is to use his influence to procure an appointive office. It does not define the individual or entity to whom the money or

thing of value is ultimately to be paid (here, the Republican Party), when that person is different from the offeree as in this case. If the section is read as the District Court construed it, with "person, firm, or corporation" defining only the ultimate recipient, there is no phrase left defining the persons who should not be approached to use influence. This would be an anomaly in a statute designed to prevent solicitation of the use of influence.

B. An offer of a substantial contribution to a congressman's political party is a "thing of value" within 18 U. S. C. 214.

1. Congress, in employing the term "thing of value" in the disjunctive from "money", used an intrinsically broad term to encompass old, and anticipate new, forms of temptation in the area of job-purchasing. The extent of the value of the offer to this particular congressman was, of course, left undetailed, by reason of the dismissal of the information in advance of trial, but it is obvious that it would be of great value to a congressman to be the person responsible for obtaining substantial contributions to his party. And the increase in party funds might well be available for a future political campaign of his own. Appellee's argument that political contributions are not criminal is not in point; what is here prohibited is the offer of such a consideration, as any other consideration, as a means of job-purchasing.

2. The district judge, in assuming the offer not to be a "thing of value" under the statute, relied upon the specific reference to political contributions in another section (18 U. S. C. 215) relating to sellers of jobs

rather than buyers. The judge disregarded the fact that, in this other reference, political contributions were treated not as something apart from "thing of value" but as an illustration thereof. The term is used in a phrase prohibiting the solicitation of any money or thing of value "as" a political contribution or for personal purposes. The term "political contribution" is thus employed only as an illustration of *how* money or a thing of value can be solicited, not as narrowing the broad range of the general term "thing of value."

There is a difference between the situation of a solicitor of job-bribes and an offerer of such bribes which probably accounts for the greater specificity in the section dealing with solicitation (18 U. S. C. 215). The job-buyer would always be acting for a specific personal reason—the job—and would ordinarily be in no position to claim that he was acting for some general public good. A job-seller, however, could more readily claim that he was merely engaging in general political activity. It was to this form of excuse that the statutory illustration in Section 215 was addressed.

In addition, the different structures of the two sections, dealing respectively with the job-buyer and the job-seller, afford an explanation of the use of illustrations in one section and not in the other. The precursor of the present Section 214 already embodied comparable coverage by means of the phrase proscribing an offer 'to any person, firm, or corporation," which, as we demonstrate, *infra*, would be expected to include a political party. No such inclu-

sion was otherwise spelled out in the precursor of Section 215, and the specification of a "political contribution" would therefore serve a useful purpose in that section. Accordingly, the specific mention in Section 215 of a political contribution as a "thing of value" supports, rather than negates, the conclusion that such a contribution is a "thing of value" that may not be offered under Section 214.

3. The legislative history supports these views. While it does not afford an outright explanation of the difference in structure (and illustrative terms) of Sections 214 and 215, it does disclose Congress' concern with political contributions. Had there been a purpose to make so noteworthy and incomprehensible a distinction as allowing job-purchasers to employ such contributions while prohibiting them in the case of job-sellers, that distinction would have been discussed and somehow explained and justified. The purposes of the legislation were, instead, stated in the broadest terms. While references to solicitations of political contributions as pay for offices were naturally in numerical preponderance, one of the congressmen spoke in the same vein of those who solicited campaign contributions and of those who made them.

4. That "thing of value," under Section 214, is no less broad than under Section 215, is made even clearer when the language is examined in the context of its reenactment in 1948 in Title 18 of the United States Code, and more specifically in Chapter 11, entitled "Bribery and Graft." The chapter exhibits a repeated pattern of the use of the general phrase "thing of value" simultaneously with specific illustra-

tions of various types of value encountered in the respective circumstances of bribery or graft dealt with in the particular section. Fifteen of the 23 sections employ the term "thing of value." Three of these 15 sections concurrently add the phrase "check, order, conract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value"; six add the phrase "directly or indirectly"; one adds the phrase "or any other bribe"; one adds the term "present"; another adds the alternate term "gratuity"; two add the alternate terms "fee" and "commission"; one adds the alternate term "bonus", and another the alternate term "gift."

If, as assumed by appellee, the specification of a particular type of thing "of value" were to exclude its application in other sections where not similarly specified, the result, in this chapter of Title 18, would be almost a complete negation of the entire purpose of the enactment. The term "thing of value" would be so narrowed by exclusion from it of a "check", "order", "undertaking", "gratuity", "bribe", "fee", "commission" that it would be of very limited application when used, as it is often used, with only one or a few of these specific terms.

II.

Even if the district judge's premise were accepted—*i. e.*, that the statute should be read as prohibiting only an offer to give "money" to a "person, firm, or corporation"—his conclusion that the Republican Party does not come within this term totally

disregards the effect of 1 U. S. C. 1, enacted into positive law a year before Title 18 was so enacted. Section 1 of Title 1 of the United States Code provides that "words importing the singular include and apply to several persons, parties, or things", and that "the words 'person' and 'whoever' include corporations, companies, *associations,* firms, partnerships, societies, and joint stock companies, as well as individuals * * * unless the context indicates otherwise" (emphasis added).

The district judge himself defined a political party as "a body of persons *associated* for the purpose of promoting certain views, opinions, or principles" (R. 7; emphasis added). His suggestion that if Congress had intended application to political parties it would have added that term to the definition ignores the fact that Congress in 1 U. S. C. 1 had already broadened the term "person" to include an "association".

ARGUMENT

The holding of the District Court that the present federal statutes do not prohibit one from endeavoring to obtain an individual's influence to secure an appointive federal office by offering to make contributions to his political party is incorrect and contrary to the intent of Congress. Section 214 of Title 18 of the United States Code, *supra,* p. 2, does make such an offer a federal crime. Two portions of the section are involved in the erroneous ruling of the court below—"person, firm, or corporation", and also "thing of value"—and in each instance the court has misconstrued the statute.

I.

AN OFFER TO AN INDIVIDUAL TO CONTRIBUTE MONEY TO HIS POLITICAL PARTY IS AN OFFER OF A "THING OF VALUE" TO THAT "PERSON" UNDER 18 U. S. C. 214

Our main position is that the offer to an individual (Congressman Stauffer) to contribute money to his political party (the Republican Party) is an offer of a "thing of value" to the individual "person" within the prohibition of 18 U. S. C. 214, *supra*, p. 2. As noted in the Statement, *supra*, pp. 3–4, the District Court rejected this contention on two separate grounds: (a) where an offer is made to an individual to pay money to someone else, the ultimate payee (as distinguished from the immediate offeree) must be the "person, firm, or corporation" named in the statute (and the Republican Party is not such a "person, firm, or corporation")[1] and (b) even if the statutory term "person, firm, or corporation" applies to the offeree (rather than the ultimate payee), there was no crime in this case because the offer to the congressman to make substantial contributions to his party did not constitute the offer of a "thing of value" under the statute. In this Point, we show, *first*, that the term "person, firm, or corporation" applies to the offeree (the congressman), not the ultimate recipient (the party); and, *second*, that an offer to make contributions to the party is the offer of a "thing of value" to the congressman. In Point II, we make the alternative argument that, in any event, the in-

[1] We discuss in Point II, *infra*, pp. 25–26, the court's holding that a political party cannot be a "person, firm, or corporation" under Section 214.

formation charges an offer to give *money* to the Republican Party—which is (contrary to the District Court's holding) a "person" under the statute.

A. THE STATUTORY PHRASE "TO ANY PERSON, FIRM, OR CORPORATION" RELATES TO THE OFFEREE, NOT THE ULTIMATE RECIPIENT

The phrase "to any person, firm, or corporation" in Section 214 is reasonably read as defining only the person (or entity) to whom the offer or promise is made and who is to use his influence to procure an appointive office. It does not define the individual or entity to whom money (or a thing of value) is ultimately to be paid (when that person is different from the offeree, as in this case). The statutory pattern clearly fits this reading. In stating that the statute limits "the payee" to a "person", the District Court disregarded the statute's alternative to "money"—a "thing of value"—as to which the word "payee" is inappropriate. Moreover, if the section is read as the District Court construed it, with "person, firm, or corporation" defining only the ultimate recipient of the money or thing of value, there would be no phrase left defining the persons who should not be approached to use influence, *i. e.*, the offerees. This would be an anomaly in a statute designed to prevent solicitation of the use of influence.

In short, what the statute provides is that no offer should be made to a "person, firm, or corporation" which would induce *that* person, firm, or corporation to use influence; the ultimate recipient of the money or other thing of value is not described or characterized by the section. Here, the information admittedly charged an offer to a "person", Congressman

Stauffer. There is a question as to whether what was offered to him—the payment of money to his political party—is a "thing of value" under the statute; that is the important question in this case which we discuss in subpoint B of Point I, *infra*. But the District Court erroneously created an inappropriate issue by holding that the statutory words "person, firm, or corporation" apply to the ultimate recipient of what is offered rather than to the offeree.

B. AN OFFER TO A CONGRESSMAN TO MAKE SUBSTANTIAL CONTRIBUTIONS TO HIS POLITICAL PARTY, IN CONSIDERATION OF INFLUENCE TOWARD A POSTMASTERSHIP, IS THE OFFER OF A "THING OF VALUE" WITHIN THE PROHIBITION OF 18 U. S. C. 214

The offer to Congressman Stauffer for the use of influence, charged in the information, was to pay $1,000 a year to the Republican Party.[2] The real issue in this case, in our view, is whether this was an offer of a "thing of value" to the congressman within the coverage of the statute. We submit that it was. It seems evident that an offer to make annual contributions to his party is the offer of a thing having substantial value to a congressman. It is therefore an offer prohibited by 18 U. S. C. 214.

1. Congress employed a broad general term, "thing of value," in addition to the specific term "money"

The statute discloses on its face its purpose to prohibit, not merely offers of "money" in order to influence appointment to federal office, but the whole broad range of values that can be utilized to tempt

[2] The fact that Congressman Stauffer is a Republican is a matter of judicial knowledge. Congressional Directory, 1953 ed., p. 125; 1954 ed., p. 124.

anyone to use influence. Even criminal legislation, when it is designed to accomplish a broad social objective, is to be construed so as to accord with its basic purpose. *United States* v. *Dotterweich*, 320 U. S. 277, 280; *United States* v. *Lacher*, 134 U. S. 624, 628. "We agree to all the generalities about not supplying criminal laws with what they omit, but there is no canon against using common sense in construing laws as saying what they obviously mean." *Roschen* v. *Ward*, 279 U. S. 337, 339.[3]

This Court, in rejecting an argument for a narrow construction (there designed to exclude from the offense of solicitation of job-purchases the case of federal positions not yet established), said in *United States* v. *Hood*, 343 U. S. 148, 150–151:

> The evil at which the statute is directed is the operation of purchased, and thus improper, influence in determining the occupants of federal office. * * * Nothing has been suggested, either by the sparse legislative history or by prior judicial construction, to restrain us from giving effect to the obvious ordinary reading of the statute. It is pressed upon us that criminal statutes are to be strictly construed. But this does not mean that such legislation "must be construed by some artificial and con-

[3] That the present statute is to be given a broad construction to accomplish its underlying policy has been demonstrated by the revisers of Title 18 of the United States Code in modifying the language of the original provision for its enactment as 18 U. S. C. 214. In explaining the addition of the words "or place," the revisers stated that the words were inserted after the term "appointive office" in order "to give broader scope to the section" (Reviser's Note following 18 U. S. C. 214).

> ventional rule." *United States* v. *Union Supply Co.*, 215 U. S. 50, 55. We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in.

As "a matter of ordinary English speech", the term "thing of value" is a very broad one designed to encompass old, and anticipate new, forms of temptation which may be devised. Many things in addition to money (to be paid directly) can be of value to a promisee. Specifically, a promise of an annual contribution to a political party can be—and on its face would almost certainly be—of value to one whose elective office runs for two years. The extent of the "value" of the offer to Congressman Stauffer, embodying very substantial contributions promised to his political party, was left undetailed, because of the district judge's dismissal of the information in advance of trial. But judges "need not be blind to the fact[s] of political life" (*United States* v. *Hood, supra,* 343 U. S. at 150). It is obvious that it would be of great value to a congressman to be the person responsible for obtaining such substantial contributions. Indeed, the increase in party funds might well be available for a future political campaign of his own. At the very least, in the present posture of the case—upon dismissal of the information—the possibility that the offer of contributions was factually a "thing of value" to the offeree must be taken as something provable under the information, and thus conceded.

It is of course true, as argued in appellee's Motion to Affirm (p. 5), that a contribution to a political

party is not intrinsically criminal but that it is rather to be encouraged. But it is unnecessary to elaborate the difference between a contribution to a party as an expression of political support, and the promise of a contribution as consideration for the use of influence to obtain appointive office.

2. The District Court erred in relying upon the specific reference to political contributions in 18 U. S. C. 215 as an exclusion of such contributions from 18 U. S. C. 214

The District Court relied on the fact that the section here involved, 18 U. S. C. 214, was originally enacted as part of a statute (44 Stat. 918) which read as follows:

> * * * That it shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.
>
> SEC. 2. It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.
>
> * * * * *

The court assumed that the use of the term "political contribution" in Section 2 (dealing with solicita-

tions of bribes)[4] tended to negate an intention to include offers of such contributions in Section 1 (now 18 U. S. C. 214). But the court overlooked the manner in which the term "political contribution" was employed. The contribution was not listed in the second section as something different from, or in addition to, a "sum of money or thing of value", but rather as one means of giving money or a thing of value. Had the language prohibited "any sum of money, thing of value, *or* political contribution" it might have been taken as some indication of a congressional view that such a contribution was not included in a "thing of value." But that is not the case. What is prohibited is the solicitation of "any sum of money or thing of value, whatsoever". The reference to a "political contribution" is to a solicitation of money or thing of value "as" a political contribution or for personal purposes, not as the solicitation of something separate. Congress was making it clear that the solicitation of money or other thing of value for the unlawful purpose was prohibited, whether the money or thing of value was to be used as a political contribution or for the solicitor's personal benefit. The reference to a political contribution was therefore employed only as an illustration or example of *how* money or a valuable benefit can be solicited, and not as narrowing the broad range of "thing of value, whatsoever." In the absence of clear treatment of a political contribution as something apart from a thing of value, the fact that the illustration or example was given in one section of

[4] Now 18 U. S. C. 215, *supra*, p. 2.

the statute and not in another does not have the dispositive effect which the court below attributes to it.

There is a difference between the situation of a solicitor (or seller of jobs) and an offerer (or buyer) which probably accounts for the greater specificity in the section dealing with solicitation. An offerer seeking to *purchase* a position would always be acting for a specific personal motive—the job sought to be obtained—and would not ordinarily be in any position to claim that what he was doing was for some general public good. On the other hand, the solicitor of funds could frequently be in a position to advance a claim, spurious though it might be, that he was not seeking money for himself but merely engaging in general political activity. It was to this latter form of excuse, largely available only to the solicitor, that the statutory illustration was addressed. That type of specificity would not ordinarily be required as to an offerer, for the excuse would not ordinarily be attempted by or available to an offerer.

The precursor of Section 214, moreover, already embodied a comparable coverage by means of different wording appropriate to the offerer and not appearing in the second section, *i. e.*, the phrase, "Whoever pays or offers or promises any money or thing of value, *to any person, firm, or corporation* * * *" [emphasis added]." For reasons discussed below in Point II, *infra*, pp. 25–26, the words "person, firm, or corporation" would include an offer to a political party. Hence, an offer to the party to pay money, as a consideration for use of influence to secure an appointment, was already covered. Since, however, the struc-

ture of Section 215 (former Section 2) omits this phrase there was a possible opening for contentions by a job-seller, in the case of a political contribution, that he did not "receive" the money or thing of value, or solicit its receipt, but was only a conduit. See the legislative history adverting to this excuse, *infra*, pp. 19–20. The specific mention in Section 215 of political contributions as a "thing of value" which could not be bartered for appointive office thus supports, rather than negates, the conclusion that it is a "thing of value" which may not be offered under Section 214.

3. *The legislative history supports the view that political contributions to a party are within the prohibiton of offering a "thing of value"*

While the legislative history affords no outright explanation of the difference in structure (and illustrative terms) between Section 214 relating to the offerer and the companion section (Section 215) relating to a solicitor, the history does tend to show that Congress intended to include political contributions within the scope of "thing of value" in both provisions, whether solicited or offered. There is no reference in the committee reports to any difference between solicitor and offerer in this respect. A difference between the coverage of the two sections would have been sufficiently noteworthy to have been mentioned, if a difference had been intended. Moreover, there is no reference to any exclusion of political contributions from the proscribed devices of a job-purchaser. To the contrary, the purpose of the instant enactment (Section 214) was stated in the broadest

terms in the House committee report (H. Rep. No. 1366, 69th Cong., 1st Sess., June 3, 1926):

> This bill seeks to punish the purchase and sale of public offices. Certain Members of Congress have brought to the attention of the House both by speeches on the floor and statements before the Judiciary Committee a grave situation, disclosing corruption in connection with postal appointments in Mississippi and South Carolina. It is believed that this bill will prevent corrupt practices in connection with patronage appointments in the future.

In addition, the legislative history affirmatively shows that Congress was directing its attention to the promise of federal office, particularly post-office positions, in return for contributions to the party (65 Cong. Rec. 1409–1412). Congressman Stevenson had reported of one solicitor (65 Cong. Rec. 820), "Oh, he said he was collecting this money for a campaign fund." It is therefore understandable that Congress found it appropriate to spell out specifically, as to solicitors, that it was prohibiting solicitation "either as a political contribution, or for personal emolument." But nothing in the history indicates that the precaution of specifically including a political contribution as a "thing of value" to a solicitor or recipient was to be applied in the other section as a limitation, rather than clarification, of the otherwise inclusive scope of the term "thing of value" with respect to an offerer. To the contrary, in the congressional discussions in the years preceding the enactment of the legislation, while references to solicitations of pay for offices were naturally in numerical preponderance, it

was noteworthy that Congressman Wurzbach spoke, not alone of the solicitors of campaign contributions, but also in cynical vein of those who made the contributions (67 Cong. Rec. 4942): "Many were 'called' to contribute, and many did contribute with the inspired hope that they would be among the 'chosen elect'."[8]

[8] As in the case of the history leading to enactment of the legislation, it could reasonably be expected that, if there were actually a distinction excluding political contributions in the case of the buyers of jobs, but not of sellers, some mention of the distinction would have appeared somewhere in the writings or utterances of congressmen and administrative officials when they were called upon for relatively accurate descriptions of the enactment. We find no recognition of any such distinction. Thus, when Congress, in 1951, amended Section 2 (concerning solicitation) to prohibit obtaining of fees by employment agencies (65 Stat. 320), the committee reports described the law as follows: "Under existing law it is a criminal offense for anyone to solicit or receive any money or thing of value * * *" (S. Rep. No. 3, 82d Cong., 1st Sess., p. 1; H. Rep. No. 784, 82d Cong., 1st Sess., p. 2). In 1946, 1947, and 1949, with respect to a similar proposed amendment, similar language appeared (S. Rep. No. 1036, 79th Cong., 2d Sess., March 12, 1946; S. Rep. No. 2, 80th Cong., 1st Sess., January 15, 1947; S. Rep. No. 7, 81st Cong., 1st Sess., January 24, 1949).

The same treatment of the political contribution language appeared in the speech of Senator McCarran, of the Senate Judiciary Committee, in introducing the 1951 amendment on the floor of the Senate (97 Cong. Rec. 10682), in the letter of the President of the Civil Service Commission to the Senate, dated December 14, 1945 (reproduced in S. Rep. No. 3, *supra*), and in the letter of the Executive Director of the Civil Service Commission to the House Judiciary Committee, dated February 20, 1951 (reproduced in H. Rep. No. 784, *supra*). And see the even broader summary "pay or offer or promise to pay for the use of influence", in the letter of the Attorney General to the Senate, dated February 19, 1946, in S. Rep. No. 3, *supra*.

4. As reenacted in 1948, within its context of the codified provisions on "Bribery and Graft" in Title 18, the instant Section 214 clearly prohibits political contributions as a means of influencing appointment to a federal position

That "thing of value", as used in Section 214, was not intended to be less broad than the same term as used in Section 215, where political contributions are specifically spelled out as a thing of value, becomes even clearer when the language is reexamined within the context of its reenactment by Congress in 1948 in Title 18 of the United States Code, and more specifically in Chapter 11, entitled "Bribery and Graft". What is immediately apparent from that chapter is a repeated pattern of use of the general phrase "thing of value", together with specific illustration of various types of things of value encountered in the respective areas of bribery or graft dealt with in the particular sections. If the rule contended for by appellee—to exclude from things "of value" a thing specifically designated elsewhere in the comparable provisions of the criminal code—were to be applied consistently in this chapter, scarcely a shred of meaning would be left for the intrinsically broad phrase "thing of value". Thus, while 15 of the 23 sections of the chapter employ the term "thing of value",[6] three of these 15 sections concurrently add the phrase "check, order, contract, undertaking, obligation, gratuity, or security for the payment of money or for the delivery or conveyance of anything of value",[7] six add the phrase "directly or

[6] 18 U. S. C. 201, 204–206, 208–209, 211–217, 219–220.

[7] 18 U. S. C. 201, 204 and 205 (which also adds "promise").

indirectly",[8] one adds the phrase "or any other bribe" (18 U. S. C. 209), one adds the term "present" (18 U. S. C. 211), one adds the alternate term "gratuity" (18 U. S. C. 213), two add the alternate terms "fee" and "commission" (18 U. S. C. 219–220), one adds the alternate term "bonus" (18 U. S. C. 219), and another the alternate term "gift" (18 U. S. C. 220).

It thus is clear that if, as assumed by appellee, the specification of a particular type of thing "of value" were to exclude its application from sections where it is not similarly specified, the result in Chapter 11 of Title 18 would be complete negation of the entire purpose of the enactments—the term "thing of value" would be so narrowed by exclusion from it of a "check", "order", "undertaking", "gratuity", "bribe", "fee", and "commission" that it would be meaningless when used, as it is often used, with only one or a few of these specific terms. A person who gave a check as a bribe to a judicial officer would be enabled to argue that this was not a "thing of value" under Section 206 because in the immediately preceding Sections 204 and 205, proscribing offers to and receipts by members of Congress, the statute spelled out "check, order", and the like, but did not do so in Section 206. The offerer could, with the same questionable mode of interpretation, contend that if he gave a "fee" to the judicial officer this would not be within the broader term "money or thing of value" since the term "fee" was used separately and specifically when so intended (*e. g.*, in Sections 219–220). The same nullifying type of defense could be similarly

[8] 18 U. S. C. 205, 206, 209, 212, 213, 216.

advanced by a judicial officer receiving a check (Section 208), by a person giving a check to a witness (Section 209), and by the whole array of offenders under Sections 211–216, 219–220, where checks are not specifically mentioned. Under other sections specifying only one or more general means of corruption, such as "fee or compensation" (Section 203), "bribe" (Section 207), "loan or gratuity" (Sections 217–218), "fee, commission", or "other consideration" (Sections 221–222), and "fee, charge or other consideration" (Section 223), it would require only the ingenuity of an offender in employing one or another of the means specified in another section, but not in the particular one, to evade the intended general effect of the terms actually employed in that particular section.

Appellee's argument, shown to be wholly incorrect by this scheme of Chapter 11 of Title 18, is also put to rest by the language employed in the notes of the revisers. In explaining why the words "check, order" were inserted in Sections 201–202, 204–205, 207, the revisers stated (Reviser's Note following 18 U. S. C. 201) that the insertion was made to "clarify" the statute and to meet a district court holding that a check was not a thing of value. Had the check not already been contemplated as included under a "thing of value" the revisers would not have acted to "clarify" the statute but would have stated that they were "adding" to, or "amending" the statute. In specifically designating checks and orders, the revisers were, accordingly, in no sense excluding those items from "things of value" in the many other sections of the statute where there was no such specific illustra-

tion (18 U. S. C. 206, 208–209, 211, 212–216, 219–220). That, we submit, is the general pattern of Chapter 11 of 18 U. S. C.

Equally patent as a part of the structure of the Code chapter on bribery and graft is the specification of different items of "things of value" for the *offerers* as distinguished from *receivers* of bribes, with the manifest purpose of covering specifically the kinds of excuses typically advanced by the respective groups of offenders, but with no discernible purpose to narrow the broadly inclusive prohibition against giving or taking a thing of value. Thus, in Section 212 dealing with an *offer* to a customs officer and Section 213 dealing with a *receipt* by a customs officer, the additional specification "gratuity" appears only in Section 213. In Sections 219 and 220, dealing with procurement of a Federal Reserve bank loan, the specification "bonus" appears only in Section 219 relating to the procurer of the loan, and the specification "gift" appears only in Section 220 relating to the bank officer or employee. In the single Section 221 respectively dealing, in separate paragraphs, with *receivers* of unauthorized fees in connection with farm loans, and persons *causing* land banks to give unauthorized fees, only the first paragraph employs the term "beneficiary", and only the second paragraph the term "bonus".

Accordingly, we think it clear from the entire context in which Sections 214 and 215 find their setting that any interpretation seeking to adduce fine distinctions from the specific terms employed in various

sections of Chapter 11 of Title 18—terms used by way of clarification and in an effort to button up all loopholes—would produce only the most specious of distinctions and would do violence, not only to Section 214, now before the Court, but to the entire structure of the legislation seeking to deal with the multifold and always ingenious activities of bribery and graft.

II.

IN ANY EVENT, THE INFORMATION CHARGES AN OFFER TO GIVE MONEY TO A POLITICAL PARTY, WHICH IS A "PERSON, FIRM, OR CORPORATION" UNDER 18 U. S. C. 214

We have argued in Point I, *supra*, that 18 U. S. C. 214 prohibits an offer to a congressman to give money to his party, because such a gift to the party is a "thing of value" to the congressman, who is clearly a "person" (under the statute) to whom the offer is made. But even if we are wrong, and the statute must be read as prohibiting in this case only an offer to give "money" to any "person, firm, or corporation" (here, the offer to give money to the Republican Party),* the information still charges a crime. For the status of a political party as a "person, firm, or corporation" under the statute seems clear, despite the District Court's contrary holding.

In 1926, when the forerunner of Section 214 was enacted, Section 1 of the Revised Statutes provided:

* In other words, if a contribution to a congressman's political party is not considered to be an offer of a "thing of value" *to him*.

> In determining the meaning of the revised statutes, or any act or resolution of Congress, passed subsequent to February twenty-fifth, eighteen hundred and seventy-one, words importing the singular number may extend and be applied to several persons or things; * * * the word "person" may extend and be applied to partnerships and corporations * * * unless the context shows that such words were intended to be used in a more limited sense * * *.

Later, Section 1 of Title 1 of the United States Code, enacted into positive law a year before Title 18 was similarly enacted, provided that "words importing the singular include and apply to several persons, parties, or things", and that "the words 'person' and 'whoever' include corporations, companies, *associations,* firms, partnerships, societies, and joint stock companies, as well as individuals * * * unless the context indicates otherwise" (emphasis added).

The District Court below itself defined a political party as "a body of persons *associated* for the purpose of promoting certain views, opinions, or principles" (R. 7; emphasis added), but the judge at no point adverted to 1 U. S. C. 1, *supra.* The suggestion that if Congress had intended political parties to be covered by 18 U. S. C. 214, it would have added that term to the section's definitional phrase—in addition to "person, firm, or corporation"—ignores the fact that the definition of "person" in 1 U. S. C. 1 had already been broadened to include an "association", which the court conceded to be a proper definition of a political party.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted.

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DECEMBER 1958.

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October Term, 1958

No. 72

UNITED STATES OF AMERICA,
Appellant,

v.

GEORGE DONALD SHIREY.

Appeal from the United States District Court for the Middle District of Pennsylvania.

MOTION TO AFFIRM.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1957

No.

UNITED STATES OF AMERICA, APPELLANT

v.

GEORGE DONALD SHIREY

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MOTION TO AFFIRM.

OPINION BELOW.

The memorandum opinion of the District Court is set forth in the Appendix, infra, pp. 1a-6a. It is not reported.

STATUTES INVOLVED.

18 U. S. C. 214:

> Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

18 U. S. C. 215:

> Whoever solicits or receives, either as a political contribution, or for personal emolument, any money

or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

QUESTIONS PRESENTED.

Whether 18 U. S. C. 214 proscribes an offer or promise to a Congressman to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or promise to use any influence to procure for the offeror the appointive office of Postmaster of York, Pennsylvania.

THE QUESTION IS UNSUBSTANTIAL.

The Order of the Court below dismissing the information lodged against the appellee is proper under the law and the questions on which the decision of this cause depends are so unsubstantial as not to need further argument. For these reasons, as hereinafter amplified, the appellee hereby moves that the Order of the Court below entered March 17, 1958, be affirmed by this Court.

1. The information does not charge an offer or promise of money to a person, or a firm, or a corporation. The offer or promise charged in the information was to donate $1,000 a year to the Republican Party to be used as they see fit. The Republican Party is neither a person, nor a firm, nor a corporation. As stated in the opinion of the Court below (Appendix, infra, p. 5a).

> "A political party has been defined as a body of persons associated for the purpose of promoting certain views, opinions, or principles with respect to government. 29 C. J. S. Political Parties, Paragraph 84. It is in no sense of the word a person, a firm, or a corporation. Had the Congress so intended, it could have added to the words 'person, firm or corporation' the further words 'or political party'."

In enacting 18 U. S. C. 214 the Congress was endeavoring to proscribe certain activities peculiar to political life and its adjunct, patronage. With regard to politics and patronage, the Congress is a uniquely well-informed and sophisticated body. Recognizing the peculiar acumen possessed by the Congress in the political and patronage areas, it can only be concluded that the omission of any reference to political parties or political contributions in 18 U. S. C. 214 was a calculated omission. When the Congress wished to proscribe political contributions it knew well how to do so and did so in 18 U. S. C. 215, the subsection immediately following 18 U. S. C. 214, to be discussed below.

Furthermore, the words "person, firm or corporation" denote specific, limited and definable objects. The Republican Party, on the other hand, is an amorphous entity whose policies and membership are in a constant state of flux. To subsume under the heading of "person" or "firm" or "corporation" the chameleon-like assemblage known as the Republican Party would be to extend and distort the plain meaning of the statute in a way unjustified by logic or common parlance, and would in addition thereto violate the principle that criminal statutes are to be strictly construed. *United States v. Hood*, 343 U. S. 148, 151 (1952). The appellant argues that *United States v. Hood*, supra, rejects a narrow construction of 18 U. S. C. 215. The appellee submits that the *Hood* case accepts a narrow construction of 18 U. S. C. 215, but refuses to "read out what, as a matter of ordinary English speech is in." *United States v. Hood*, 343 U. S. 148, 151 (1952). It is equally true that there should not be read in what as a matter of ordinary English speech is out.

2. The information does not charge an offer or promise of a thing of value to a person, or a firm, or a corporation. The appellant argues at page 3 of its Jurisdictional Statement that because Congressman Stauffer might have his prestige or chance of re-election heightened, that, therefore,

a donation to the Republican Party is a "thing of value" to Congressman Stauffer. This reasoning is unjustified for the following reasons:

a. The information suggests no nexus between the Republican Party and Congressman Stauffer. Indeed, money donated to the Republican Party might be used against the Congressman if he were a Democrat or out of favor with those who at the time control the party funds.

b. The information charges that the offer or promise made was to donate $1,000, i.e., money and does not charge an offer or promise to donate a "thing of value". If something other than money were offered to a person, or a firm, or a corporation, then it must be first ascertained if that other thing comes within the term, a "thing of value". But when money is offered or promised then the examination is reduced to a determination as to whether the money so offered or promised was offered or promised to a person, firm, or corporation. As the appellee has attempted to establish, the Republican Party is neither a person, nor a firm, nor a corporation, and hence the information fails to allege a violation of 18 U. S. C. 214. The offer alleged was an offer of money, it was not an offer of a "thing of value" as distinguished from money. The reasoning of the appellant that although there was an offer of money but not to a person, firm, or corporation, that nevertheless the possibility that a person might gain therefrom changes an offer of money into an offer of a thing of value distorts the simple and clear meaning of the statute and violates the principle of strict construction, as above set forth.

c. Even assuming Congressman Stauffer stood to benefit from a donation to the Republican Party, such

benefit does not constitute a "thing of value". The words "thing of value" follow the word "money". They must be read in connection with the word "money" and so read they do not include within their meaning such highly conjectural and illusory benefits as suggested by the appellant. Furthermore, the appellant would construe "thing of value" from the point of view of an incidental beneficiary. To do so would make the criminal sanctions imposed by 18 U. S. C. 214 dependent not on what the offeror knows or offers, but rather on the day to day personal situation of any person who might incidentally benefit and to whom such benefit might be considered a "thing of value". Under the appellant's theory a contribution to a political party may be criminal on one day because it is a thing of value to a Congressman, and it may not be criminal the next day because the circumstances have so changed so as to preclude its being a benefit to the Congressman on the second day. A criminal statute should not be dependent for its applicability on such vagaries and circumstances wholly beyond the knowledge and scope of the offeror.

If the offer in the instant case were to work hard as a postmaster or to drive Republican voters to the polls on election day, it would by the appellant's definition be no less a thing of value to Congressman Stauffer than the donation of money to the Republican Party, for as a result of either of the above suggested offers or promises the prestige and the possible chance of re-election of the Congressman would conceivably be increased. These illustrations demonstrate the wholly unjustified breadth which the appellant's argument would ascribe to the statutory section in question

and, further, it is submitted, demonstrate the incorrectness of that argument.

3. As stated by the Court below in its opinion set forth in Appendix, infra, p. 4a, "Sections 214 and 215, supra, (referring to 18 U. S. C. paragraph 214 and 18 U. S. C. paragraph 215, respectively) first appear, substantially in pari materia, as a single act, approved December 11, 1926, 44 Stat. 918, H. R. 10739, Public, No. 525, as follows:" A reading of 18 U. S. C. 214 and 18 U. S. C. 215 reveals that the former makes no reference to political parties or political contributions but that the latter specifically refers to political contributions. The appellant, recognizing the significance of this comparision, seeks to minimize its importance by drawing a distinction between the offeror and solicitor. Jurisdictional Statement, page 6. It is submitted that there is no strength in the appellant's argument on this point. The distinction sought to be drawn by the appellant is that the offeror in seeking to purchase a position would always be acting for a specific personal motive and could not claim that what he was doing was for some general good. On the other hand, it is argued by the appellant, the solicitor would be in a position to claim that he was not seeking money for himself but merely engaging in general political activity.

This argument is completely at variance with the appellant's own contention that the offer in this case to the Republican Party is a "thing of value" to Congressman Stauffer. If this were so, why would not a solicitation of a contribution to the Republican Party by Congressman Stauffer be equally a "thing of value" to him. The statute does not permit such inconsistency. If "general good" and "general political activity" are defenses under one section, it is so under the other. Appellee submits, however, that neither section tolerates such defenses. An offer of a political contribution simply is omitted from 18 U. S. C. 214, while a solicitation of such a contribution is proscribed

by 18 U. S. C. 215. The attempt by appellant to draw a subtle distinction between offeror and solicitor thus is subject to two failings, both clearly seen in the facts of this case: (1) if a contribution to a political party is a "thing of value" to a Congressman under 18 U. S. C. 214, it certainly must be so under 18 U. S. C. 215; (2) a defense based on general good or general political activity could arise, if at all, under one section as well as under the other. The status of appellant's argument might thus be characterized as a situation wherein a beautiful theory is murdered by a gang of brutal facts.

Furthermore, appellant's very argument drawn from legislative history makes apparent the self-conscious use of the words "political contribution" in 18 U. S. C. 215 and their omission in 18 U. S. C. 214. If Congress had not devoted itself in its debates to the aspect of political contributions, it might be argued that the omission of political contributions from 18 U. S. C. 214 was not restrictive; but the fact that political contributions were the subject of Congressional debate when the enactment of 18 U. S. C. 214 and 18 U. S. C. 215 was under consideration strengthens the position that the specific proscription of political contributions in 18 U. S. C. 215 and the absence of such proscription in 18 U. S. C. 214 was a conscious act.

There is nothing immoral about a political contribution. Indeed, currently both major political parties are seeking ways and means of expanding the bases from whence to obtain such contributions. The rewarding of the political contributor of high office is today and has always been a prevalent and accepted practice. With this as a background it is submitted that had Congress intended to in a criminal statute proscribe the act alleged in the instant information, it would have done so only by clear verbiage and not by tenuous innuendo. The question is not whether the act alleged is improper, but whether its impropriety has been recognized and outlawed by Congress.

CONCLUSION.

It is respectfully submitted that the Court should affirm the Order of the Court below entered March 17, 1958.

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June, 1958.

Appendix.

APPENDIX.

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

No. 12527 CRIMINAL.

UNITED STATES OF AMERICA

v.

GEORGE DONALD SHIREY.

MEMORANDUM.

This is a motion to dismiss the Information because the Information does not state facts sufficient to constitute an offense against the United States of America.

The Information charges that:

> "On or about the 5th day of December, 1953, in the City of York, Middle District of Pennsylvania, and within the jurisdiction of this Court, GEORGE DONALD SHIREY, in violation of the Act of Congress, June 25, 1948, c. 645, Sec. 1, 62 Stat. 694, 18 U. S. C. Sec. 214, did KNOWINGLY, WILFULLY and UNLAWFULLY offer or promise to S. WALTER STAUFFER, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania."

As above indicated, this Information was brought under 18 U. S. C. Section 214 which reads as follows:

"Offer to procure appointive public office

"Whoever pays or offers or promises any money or thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence to procure any appointive office or place under the United States for any person, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

The counterpart to this statute appears in the next section of the Code (18 U. S. C. Section 215) and reads as follows:

"Acceptance or solicitation to obtain appointive public office.

"Whoever solicits or receives, either as political contribution, or for personal emolument, any money or thing of value, in consideration of the promise of support or use of influence in obtaining for any person any appointive office or place under the United States, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

No case construing Section 214 has been brought to our attention, nor has our independent search disclosed any.

In United States v. Hood, et al., 343 U. S. 148 (1952), appellees were indicted for violating 18 U. S. C. Section 215, which, as above indicated, makes it a misdemeanor for anyone to solicit or receive contributions in consideration of the promise of support or use of influence in obtaining for any person "any appointive office or place under the United States." The trial court dismissed certain counts of the indictment which alleged the solicitation of contributions in return for promises to use influence to obtain offices which were not in existence at the time of the solicitation or the return of the indictment but which the President had been authorized to create under the Defense

Production Act of 1950. The order of dismissal was appealed by the Government direct to the Supreme Court under the Criminal Appeals Act, 18 U. S. C. (Supp. IV) Section 3731. The Supreme Court in reversing stated, *inter alia:*

"We think the District Court was wrong. The statute is plainly broad enough on its face to cover the sale of influence in connection with an office which had been authorized by law and which, at the time of the sale, might reasonably be expected to be established. That was the situation here and we do not have to go further to say whether the words will cover the sale of an office which is purely the creature of the seller's fancy.

"The evil at which the statute is directed is the operation of purchased, and thus improper, influence in determining the occupants of federal office. But in attacking that evil, Congress outlawed not the use of such influence, but the solicitation of its purchase, the peddling of the forbidden wares. As is not uncommon in criminal legislation, Congress, in order to strike at the root, made the scope of the statute wider than the immediate evil. Even judges need not be blind to the fact of political life that it helps in influencing political appointments to be forehanded with a recommendation before an office is formally created. Certainly it was not unreal for Congress to believe that the sale of influence in anticipation of jobs was equally damaging to the proper operation of the federal service and to take steps to prevent it. It did so in this Act. Nothing has been suggested, either by the sparse legislative history or by prior judicial construction, to restrain us from giving effect to the obvious, ordinary reading of the statute. It is pressed upon us that criminal statutes are to be strictly construed. But this does not mean that such legislation 'must be construed by some

artificial and conventional rule.' *United States v. Union Supply Co.*, 215 U. S. 50, 55. We should not read such laws so as to put in what is not readily found there. But equally we should not read out what as a matter of ordinary English speech is in.

"This Act penalized corruption. It is no less corrupt to sell an office one may never be able to deliver than to sell one he can. Dealing in futures also discredits the processes of government. There is no indication that this statute punishes delivery of the fruit of the forbidden transaction—it forbids the sale. The sale is what is here alleged. Whether the corrupt transaction would or could ever be performed is immaterial. We find no basis for allowing a breach of warranty to be a defense to corruption."

In the instant case we are not dealing in a sale, rather an attempted purchase.

Sections 214 and 215, supra, first appear, substantially in pari materia, as a single act, approved December 11, 1926, 44 Stat. 918, H. R. 10739, Public, No. 525, as follows:

"An Act To prevent purchase and sale of public office.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That it shall be unlawful to pay or offer or promise to pay any sum of money, or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.

"SEC. 2. It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value, whatsoever, in consideration of the

promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.

"SEC. 3. Anyone convicted of violating this Act shall be punished by imprisonment of not more than one year, or by a fine of not more than $1,000, or by both such fine and imprisonment.

"SEC. 4. All Acts and parts of Acts inconsistent herewith are hereby repealed."

This is a criminal statute and with the reservations made in United States v. Hood, supra, must be strictly construed. United States v. Five Gambling Devices, 7 Cir., Slip Opinion February 18, 1953. The construction of a statute should be with reference both to the history of the legislation and to other sections of the law with which it is in pari materia. Gutschalk v. Peck, D. C. N. D. Ohio, 1919, 261 Fed. 212.

As above indicated, Sections 214 and 215 first appeared in 1926 as a single act. The soliciting section (215) specifically mentions "political contribution." No such characterization is found in Section 214 under which this Information is drawn. The Information here alleges that the defendant offered or promised to donate $1,000. a year to the Republican Party. The section in question specifically limits the payee to "any person, firm or corporation." A political party has been defined as a body of persons associated for the purpose of promoting certain views, opinions, or principles with respect to government. 29 C. J. S. Political Parties Section 84. It is in no sense of the word a person, a firm, or a corporation. Had the Congress so desired, or intended it, it could have added to the words, "person, firm or corporation" the further words "or political party."

Having in mind the obvious evil at which both Section 214 and Section 215 are directed, namely, the traffic in federal offices, it is interesting to note that only in Section 215 (solicitation) was Congress concerned about a political contribution. The two sections have stood with no substantial change for nearly thirty-two years. It is not, in my judgment, the province of the courts to attempt to rationalize this apparent deliberate omission.

In the instant case the Information does not charge that the offer was to contribute to the individual named therein, a Congressman; the offer was made to the individual to contribute to the Republican Party. Considering Sections 214 and 215 as a whole, and having in mind the rules or construction above referred to, particularly in the light of the Hood case, supra, it is my conclusion that the Information does not state facts sufficient to constitute an offense against the United States of America.

Motion to dismiss the Information will be granted.

/s/ FREDERICK V. FOLLMER,
United States District Judge.

March 17, 1958.

ORDER.

Now, to wit, March 17, 1958, in accordance with Memorandum this day filed, It is Ordered and Decreed that defendant's motion to dismiss the Information be and the same is hereby granted.

/s/ FREDERICK V. FOLLMER,
United States District Judge.

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IN THE

Supreme Court of the United States

October Term, 1958.

No. 72.

UNITED STATES OF AMERICA,
Appellant,

v.

GEORGE DONALD SHIREY.

On Appeal From the United States District Court for the Middle District of Pennsylvania.

BRIEF FOR APPELLEE.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1958.

No. 72.

UNITED STATES OF AMERICA,

Appellant

v.

GEORGE DONALD SHIREY.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.

BRIEF FOR APPELLEE.

QUESTION PRESENTED.

Whether an information charging an offer or promise to a congressman to donate One Thousand Dollars a year to the Republican Party in consideration of the use or promise to use influence to procure a postmastership sets forth facts constituting a crime under 18 U. S. C. 214.

STATEMENT.

The information charged that appellee, in violation of 18 U. S. C. 214 on or about December 5, 1953, did wilfully "offer or promise to S. Walter Stauffer, a Member of Congress of the 19th Congressional District of Pennsylvania, to donate $1,000 a year to the Republican Party to be used as they see fit, in consideration of the use or the promise to use any influence to procure for him the appointive office, under the United States, of Postmaster of York, Pennsylvania" (R. 1). The District Court dismissed the information as not stating facts sufficient to constitute an offense under 18 U. S. C. 214 (R. 7). The court stated that the information "does not charge that the offer was to contribute to the individual named therein, a Congressman; the offer was made to the individual to contribute to the Republican Party" (R. 7). In addition, the court recognized that the "counterpart" section (18 U. S. C. 215) relating to a solicitor of an offer, specifically refers to political contributions; the court held that this indicated an intention on the part of Congress not to proscribe political contributions in 18 U. S. C. 214, that section containing no explicit provision to such effect (R. 4, 7). In its brief before this Court, the appellant now argues that the information charges an offer of a thing of value to Congressman Stauffer. This "thing of value" argument was not discussed by the court below, but is urged upon this Court by the appellant. The court below further found that the "Republican Party" is not a "person" within the terms of 18 U. S. C. 214 (R. 7).

SUMMARY OF ARGUMENT.

The information does not allege those facts essential to constitute a crime under 18 U. S. C. 214. An offer or promise to donate $1,000 a year to the Republican Party is not an offer or promise of money or a thing of value to a person, firm, or corporation. While S. Walter Stauffer is a person, the information does not allege that any money or thing of value was offered to S. Walter Stauffer. The Republican Party, to whom money was offered or promised, is not a person, firm, or corporation.

I.

The information does not charge that money was offered to S. Walter Stauffer. The alleged offer was to donate $1,000 a year to the Republican Party. This is not an offer of money to S. Walter Stauffer any more than had appellee told S. Walter Stauffer he would donate $1,000 a year to the March of Dimes Campaign.

II.

A. The information charges an offer to donate $1,000 to the Republican Party. This is an offer of money; it cannot be changed into an offer of a thing of value to S. Walter Stauffer because the words "money" and "thing of value" are used disjunctively in the statute. The information must charge either one or the other, and if it charges an offer of money, then it cannot be sustained as charging an offer of a thing of value. Furthermore, to permit an offer of money to be construed as an offer of a thing of value is to make the word "money" a superfluity in the statute for normally, money would be considered to be a thing of value. Therefore, the specification of the word "money" indicates that the words "thing of value" identify objects other than money.

B. The appellant suggests certain ways in which S. Walter Stauffer might benefit by a contribution to the Republican Party, namely, increase in stature as a result of being known as a collector of political contributions, and possible use of political contributions to benefit S. Walter Stauffer in a campaign of his own (Appellant's Brief, p. 14). The benefits contemplated by appellant could only accrue to S. Walter Stauffer if payment were made, or if the offer were known to persons other than S. Walter Stauffer. The mere offer to contribute to the Republican Party would not create those benefits. Since the information does not charge a payment or knowledge of the offer to one other than S. Walter Stauffer, there could be no thing of value to S. Walter Stauffer, even on the hypotheses set forth by the appellant.

C. S. Walter Stauffer might gain stature sometime in the future by being known as a collector of party funds, and sometime in the future funds contributed to the Republican Party might be used to further S. Walter Stauffer's election. However, these possibilities depend on facts developing after the offer is made; and indeed, depend on facts which may develop months or even years after such an offer. Furthermore, they depend on facts beyond the knowledge or control of the offeror. Such a futuristic concept of "thing of value" clearly was not within the intendment of Congress as those words are used in 18 U. S. C. 214.

D. Appellant assumes that a contribution to the Republican Party is in the very nature of things a thing of value to S. Walter Stauffer, and that the mere assertion in the information of an offer to contribute money to the Republican Party ipso facto is an assertion of an offer of a thing of value to S. Walter Stauffer. This is not so. An offer to contribute $1,000 to the Republican Party is not necessarily a thing of value to S. Walter Stauffer any more than it is a thing of value to any other person. An information, however, must set forth facts sufficient to state a

crime, not merely facts which may or may not be criminal. The facts set forth in an information must be such that if those facts, and those facts only, are proven, a crime would of necessity have been committed. The instant information falls far short of this requirement. Whether an offer to contribute $1,000 to the Republican Party is a thing of value to S. Walter Stauffer depends on facts not set forth, and not even suggested, in the information. Appellant's assumption that in the very nature of things an offer to contribute to the Republican Party is an offer of a thing of value to S. Walter Stauffer, finds no justification either in logic or in fact. The information, therefore, does not meet even the very general requirements of Fed. R. Crim. P. 7(c).

E. The appellant would give limitless meaning to the words "thing of value" as used in 18 U. S. C. 214. Indeed, under appellant's hypotheses, as appearing in its brief at page 14, anything could be a "thing of value". An offer to work hard as a postmaster, in consideration of receiving that appointment, would be just as much a thing of value to S. Walter Stauffer as would be those benefits contemplated by appellant in its brief at page 14.

However, the words "thing of value" are not limitless. They are given meaning because they are preceded by the word "money", thus providing them with a definite coloration, and they are restricted by the rule that penal statutes are to be strictly construed. Appellant's definition of "thing of value" would make meaningless the principles of ejusdem generis and the requirement that penal statutes be strictly construed.

III.

The Republican Party is not a person. A person is an "individual" by dictionary definition and by common parlance.

Furthermore, the broad meaning of "person" as set forth in 1 U. S. C. 1 is inapplicable to 18 U. S. C. 214. 1 U. S. C. 1 defines a person to include among other objects

"corporations", "firms", and "associations", unless the context indicates otherwise. Appellant contends that the Republican Party is an association, and hence, by virtue of 1 U. S. C. 1, a person. This contention is incorrect because (a) even if 1 U. S. C. 1 had not included within its definition of person the words "firm" and "corporation", the specification of particular entities in 18 U. S. C. 214 indicates an intent to exclude other entities; (b) but especially where two of the entities set forth in 18 U. S. C. 214, namely, "firm" and "corporation" are also included in the definition of "person" in 1 U. S. C. 1, there is indicated a clear intent on the part of Congress not to include other entities included within the definition of person in 1 U. S. C. 1, but not set forth in 18 U. S. C. 214. To conclude otherwise, that is, to conclude that the word "person" as used in 18 U. S. C. 214 is to have the many meanings set forth in 1 U. S. C. 1, is to render the words "firm" and "corporation" in 18 U. S. C. 214 superfluous.

In any event, the Republican Party is not an association. The Republican Party is a concept incapable of identification as an entity. The words "Republican Party" have no fixed meaning, and the concept "Republican Party" depends for its definition on the subjective criteria used by the definer. The "Republican Party" is not a national committee, a state committee, or a county committee, whose membership and purposes are more or less capable of definition. The Republican Party is an elusive concept and no more capable of being defined as an "association" than are the Dodger fans or the Yankee fans.

IV.

We are dealing with a penal statute. Penal statutes should be strictly construed, especially where, as here, the crime is malum prohibitum, and even more particularly, where the acts alleged to constitute the crime are in and of themselves desirable. The act of making a political contribution is to be encouraged; and if that act is to be pro-

scribed, regardless of the reason therefor, its proscription should be in explicit terms. Such an explicit proscription is found in 18 U. S. C. 215 where political contributions are clearly outlawed. It is not found in 18 U. S. C. 214, these two sections being in pari materia. The presence of such proscription in 18 U. S. C. 215 and its absence in 18 U. S. C. 214 indicates an intention not to proscribe political contributions under 18 U. S. C. 214. To conclude otherwise is to ignore the clear comparison between 18 U. S. C. 214 and 18 U. S. C. 215, and to read into 18 U. S. C. 214 a proscription not placed there by Congress.

ARGUMENT.

I.

THE INFORMATION DOES NOT CHARGE THAT APPELLEE OFFERED OR PROMISED MONEY TO S. WALTER STAUFFER.

S. Walter Stauffer is a person; and, therefore, if the information charges that appellee offered or promised money to S. Walter Stauffer, it states a crime under 18 U. S. C. 214. A reading of the information reveals that it does not make such a charge (R. 1). Nowhere in the information is there an assertion or even an intimation that money was offered or promised to S. Walter Stauffer. The information charges only that the appellee offered or promised money to the Republican Party.[1]

The appellant, however, characterizes 18 U. S. C. 214 as follows:

> "In short, what the statute provides is that no offer should be made to a 'person, firm, or corporation' which would induce *that* person, firm, or corporation to use influence; . . ." (Brief for appellant, p. 11).

The statute makes no such provision. 18 U. S. C. 214 specifically provides that its proscription is limited to whoever offers or promises *money to* a person, firm, or corporation. If appellant's characterization were accurate, any offer to a person, firm, or corporation inducing the use of influence would be criminal. The statute does not so provide, but limits its proscription to an offer of *money* or a *thing of value to* a person, firm, or corporation. There is no allegation in the information that money was offered or promised to S. Walter Stauffer.

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1. The appellee demonstrates in point III, *infra.*, pp. 16-19, that the Republican Party is not a person.

II.

THE INFORMATION DOES NOT CHARGE THAT THE APPELLEE OFFERED OR PROMISED A THING OF VALUE TO S. WALTER STAUFFER.

The information charges an offer or promise to donate $1,000 a year to the Republican Party to be used as they see fit. From this charge the appellant now argues that 18 U. S. C. 214 has been violated. The assumed violation is predicated on the hypothesis that the information, as drawn, asserts an offer or promise of a thing of value to S. Walter Stauffer. This "thing of value" argument is a recent nuance in this case. It is not mentioned in the opinion of the court below because it was not urged upon that court (R. 3-7). Indeed, a reading of the information suggests that the "thing of value" argument was not even contemplated by the drafter of the information. The argument is made for the first time before this Court.

The appellant's "thing of value" argument is its main position (brief for appellant, p. 10), and is bottomed on the following quotation:

> "It is obvious that it would be of great value to a congressman to be the person responsible for obtaining such substantial contributions. Indeed, the increase in party funds might well be available for a future political campaign of his own. At the very least, in the present posture of the case—upon dismissal of the information—the possibility that the offer of contributions was factually a 'thing of value' to the offeree must be taken as something provable under the information, and thus conceded" (brief for appellant, p. 14).

Based on appellant's own hypothesis, its contention that the information, by charging an offer or promise to donate $1,000 to the Republican Party, constitutes an offer or a thing of value to S. Walter Stauffer lacks merit.

A. The Offer Set Forth in the Information Is An Offer of Money and Not an Offer of a Thing of Value.

The information charges an offer to donate $1,000. This is an offer of money. The words "money" and "thing of value" are set forth disjunctively in 18 U. S. C. 214, that is, in the alternative. The disjunctive placement of "money" and "thing of value" in the statute makes it clear that where an information charges an offer to donate money, it can not thereafter be sustained as charging an offer of a "thing of value". Furthermore, the words "thing of value" have a broad connotation. Certainly, by common parlance, money is a thing of value. Since money is a thing of value, it would not have been necessary for Congress to use the word "money" in the statute unless it meant to limit the words "thing of value" to objects other than money. Such a limitation, namely, that the words "thing of value" as used in 18 U. S. C. 214 do not include money, is clear; and, therefore, when an information charges an offer to donate "money", it can not be thereafter supported by construing such information to charge an offer of a "thing of value".

B. Based on Appellant's Own Examples, the Offer in the Instant Case Could Not Be a Thing of Value to S. Walter Stauffer Unless and Until Payment Were Made, or Knowledge of Such Offer Were Conveyed to Someone Other Than S. Walter Stauffer.

The information does not allege that payment was made; but only that there was an offer to donate money. Until the money is actually paid to the Republican Party, it could not become a thing of value to S. Walter Stauffer in the manner contemplated by the appellant. Furthermore, it is not alleged in the information that anyone knew of the offer other than S. Walter Stauffer. S. Walter Stauffer's chances of re-election could not be enhanced in the manner suggested by appellant by an offer of money

to the Republican Party not consummated by payment. Also, even if the offer were consummated by payment, the money might be used for or against S. Walter Stauffer, depending on his relationship with the recipient of the funds. Finally, S. Walter Stauffer's prestige as a collector of funds would not be enhanced as suggested by the appellant by an offer to donate money to the Republican Party until that offer were made known to someone other than S. Walter Stauffer. The information is void of any assertion of payment or knowledge of the offer by one other than S. Walter Stauffer. Under such circumstances, a mere offer could not, under appellant's own hypothesis, be a thing of value to S. Walter Stauffer.

C. Whether the Offer in the Instant Case Was a Thing of Value to S. Walter Stauffer Depends on Facts Developing After the Offer, and Facts Over Which the Offeror Could Have No Knowledge or Control.

The suggested benefits accruing to S. Walter Stauffer from the offer in the instant case, as posited by the appellant, can be phrased as follows:

1. the value accruing to a congressman by being the person responsible for obtaining substantial contributions, and

2. the value accruing to a congressman as a result of the increase in party funds possibly available for a future campaign of his own.

Under these examples, whether a contribution of $1,000 to the Republican Party to use as they see fit is a thing of value to S. Walter Stauffer can not possibly be determined by facts existing at the time the offer is made, but is wholly dependent on future developments. No matter what benefit constitutes a "thing of value", the "thing of value" must be such at the time the offer is made. In the instant case, the "thing of value" accruing to Con-

gressman Stauffer might accrue to him months or even years after the offer were made, if it accrued at all. The statute of limitations could therefore run forever, for the statutory period does not begin until the crime is complete. The interpretation placed on 18 U. S. C. 214 by the appellant gives to that provision a breadth wholly unjustified by its language. To assume that Congress intended that the criminality of an act should be dependent on facts or circumstances beyond the control and knowledge of a defendant, and not even in existence at the time of the alleged criminal act, is to strain the congressional language and to attribute an arbitrary and unjustified meaning thereto.

D. The Information Does Not Set Forth Sufficient Facts to Support Appellant's Contention That an Offer of One Thousand Dollars to The Republican Party Is a Thing of Value to S. Walter Stauffer.

Fed. R. Crim. P. 7(c) provides:

> "The indictment or information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged."

The appellant, however, states "at the very least, in the present posture of the case—upon dismissal of the information—the possibility that the offer of contributions was factually a 'thing of value' to the offeree must be taken as something provable under the information, and thus conceded" (appellant's brief, p. 14). The appellant seems to assume that an offer to donate $1,000 to the Republican Party is inherently a thing of value to S. Walter Stauffer; and, therefore, the mere allegation of an offer to contribute to the Republican Party sets forth "the essential facts constituting the offense charged." This simply is not so. An offer to donate $1,000 to the Republican Party is not ipso facto or inherently a thing of value to S. Walter Stauffer any more than it is ipso facto or inherently a

thing of value to any other person. The appellant, seeking to overcome this apparent deficiency in the information, suggests in its brief that this Court should take judicial notice that S. Walter Stauffer was, at the time of the offer, a Republican Congressman (appellant's brief, p. 12, n. 2). There is no justification for this Court to take judicial knowledge of the political affiliation of anyone. But even if this Court were to take judicial notice of that fact, this does not supply the gap in the information, nor complete all the essential facts necessary for that information to charge an offense under 18 U. S. C. 214.

Congressman Stauffer may or may not be in favor with those who receive the offered contribution. If he were not, then the money contributed might be used against him, and even if he were, that is no guarantee that the money would inure to his benefit. Certainly this Court is not going to judicially notice that Stauffer is affiliated with the faction that might receive this contribution.

But even assuming that the money were to be used for the benefit of Congressman Stauffer, no assertion to that effect appears in the information. Indeed, the information states absolutely no facts from which it could be concluded that an offer to donate $1,000 to the Republican Party is a thing of value to S. Walter Stauffer. The benefits to S. Walter Stauffer contemplated by the appellant in its brief (appellant's brief, p. 14) are not set forth as facts in the information, but are simply posited as hypotheses, and indeed, hypotheses which the appellant would have to go beyond the facts set forth in the information to prove. An information must allege the essential facts constituting the offense charged. Those facts can not be supplied by the Court. The province of the Court is simply to determine whether the facts as alleged do constitute a claim. The facts set forth in this information may or may not constitute a crime, depending on whether a contribution to the Republican Party is or is not a thing of value to S. Walter Stauffer, and since there are not facts

set forth in the information clearly demonstrating that a contribution of $1,000 to the Republican Party is a thing of value to S. Walter Stauffer, the information is fatally defective.

The appellant's basic fallacy is the assumption that it is in the very nature of things that an offer of $1,000 to the Republican Party is a thing of value to a congressman. The appellee suggests on the other hand that it is not in the nature of things that an offer of $1,000 to the Republican Party is a thing of value to a congressman. The information, therefore, lacks an essential ingredient, namely, those facts necessary to constitute a crime under 18 U. S. C. 214. When one reads an information, he must be able to conclude that if the facts set forth in the information are proven, then a crime has been committed, but by reading this information, no such conclusion can be reached for additional facts must be found to exist in order that the facts alleged in the information constitute a crime. As noted above, the Court can not supply those additional facts, and also as noted above, the assumption by the appellant that a contribution to the Republican Party is inherently a thing of value to anyone other than the Republican Party finds no justification in logic or fact.

E. As Contemplated by Appellant, the "Thing of Value" Supposedly Accruing to S. Walter Stauffer Is Too Illusory to Come Within the Terms of 18 U. S. C. 214.

Admittedly, the words "thing of value" have a broad connotation, but there is no reason to believe that this connotation is limitless. Two reasons suggest themselves as a basis for its proper limitation. The first of these, as discussed hereafter, is the principle of strict construction of penal statutes. The second of these is the fact that the words "thing of value" follow the word "money" in 18 U. S. C. 214. By virtue of the principle of ejusdem

generis, the words "thing of value" are given coloration and meaning by the word "money".

But appellant would give to the words "thing of value" an unlimited meaning. Indeed, under appellant's conception of those words, an offer to work hard and diligently as a postmaster in consideration of an appointment to that job would violate 18 U. S. C. 214 for there is no reason to believe that S. Walter Stauffer would benefit in any lesser degree by being known as the appointer of good postmasters than as the appellant suggests, by being known as the collector of political contributions. Indeed, under appellant's conception, any benefit accruing to S. Walter Stauffer as a result of any act, no matter how socially desirable the act may be, would constitute a "thing of value" to S. Walter Stauffer and if offered to him in consideration of the use of his influence, would be criminal. This certainly flies in the face of the strict construction rule. Indeed, if the appellant's position were sustained, that rule would be meaningless.

III.

THE REPUBLICAN PARTY IS NOT A PERSON, AND THEREFORE AN OFFER OR PROMISE TO DONATE ONE THOUSAND DOLLARS TO THE REPUBLICAN PARTY IS NOT AN OFFER OR PROMISE OF MONEY TO A PERSON.

The word "person" is defined as follows:

> "A being characterized by conscious apprehension, rationality, and a moral sense . . . hence, an individual human being; a particular individual." Webster's New International Dictionary (2nd ed. 1957).

Certainly the Republican Party in no sense comes within such a definition. Webster's definition is consistent with common usage for by common usage the word "person" means a human being. Therefore, unless some artificial sense or meaning is ascribed to the word "person" as used

in 18 U. S. C. 214, an offer of money to the Republican Party is not an offer of money to a person.

Appellant contends that 1 U. S. C. 1, which states:

> "The words 'person' and 'whoever' include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals . . . *unless the context indicates otherwise*" (emphasis added) (appellant's brief, p. 9).

supplies such an artificial meaning to the word "person". Appellant urges that since 1 U. S. C. 1 includes within its definition of "person" (unless the context indicates otherwise), the words corporations, companies, associations, firms, partnerships, societies, and joint stock companies, and further since the Republican Party is contended to be an association within the meaning of 1 U. S. C. 1, that therefore the Republican Party is a person. This contention is incorrect for the following reasons:

The context of 18 U. S. C. 214 does indicate otherwise. 18 U. S. C. 214 proscribes an offer or promise of money to a person, firm, or corporation. If Congress had intended to superimpose the definition of person contained in 1 U. S. C. 1 onto 18 U. S. C. 214, it would not have added the words "firm" and "corporation" to 18 U. S. C. 214, because the words "firm" or "corporation" are already included within the definition of "person" as defined in 1 U. S. C. 1.

The very fact of specification of three objects, namely, person, firm, and corporation, in and of itself indicates an intent not to include objects unnamed. Congress would not have specified in 18 U. S. C. 214 some of the objects which are defined in 1 U. S. C. 1 as within the meaning of person, namely, firm and corporation, if it intended to include within the concept of person in 18 U. S. C. 214 other or all of the entities set forth in 1 U. S. C. 1 under the definition of person. The very fact of specification in 18 U. S. C. 214 seems to exclude further expansion. In

a sense this is an application of the principle expressio unius est exclusio alterius.

The instant case has, however, the additional factor that two of the objects set forth, namely, "firm" and "corporation" are two of the specific entities set forth in 1 U. S. C. 1 as possible meanings of the word "person". The word "association" is also set forth in 1 U. S. C. 1 as a further possible meaning of the word "person". Why did Congress take only two of the entities set forth in 1 U. S. C. 1 and specify them in 18 U. S. C. 214 if it intended that other objects or another object, namely, "association", should also be imposed on 18 U. S. C. 214. The answer is simple; Congress intended the word "person" as used in 18 U. S. C. 214, to have its normal meaning, namely, an individual, and not to have the expanded meaning suggested in 1 U. S. C. 1.

Chief Justice Marshall said in *Marbury v. Madison*, 1 Cranch 137, 174 (U. S. 1803):

> "Affirmative words are often, in their operation, negative of other objects than those affirmed; and in this case, a negative or exclusive sense must be given to them, or they have no operation at all.
>
> "It cannot be presumed that any clause in the constitution is intended to be without effect; and, therefore, such a construction is inadmissible, unless the words require it."

The words of Chief Justice Marshall are applied to the United States Constitution, but they are no less applicable to a statute.

Secondly, the Republican Party is not an association. The word "association" as used in 1 U. S. C. 1 is found in the sequence "corporations, companies, associations, firms, partnerships, societies, and joint stock companies." These entities all have meanings which are more or less fixed. The words "Republican Party", however, defy definition. Conceivably these words mean all registered Re-

publican voters; all who vote the straight Republican ticket; all registered Republican voters who vote the straight Republican ticket. The words could also mean those who subscribe to the political philosophy of Abraham Lincoln or Dwight Eisenhower or William. Jenner. The words could also mean registered Republicans in California, or in Missouri, or in New York. The words "Republican Party" could mean any or all of these things, but there is no reason to think that they mean one rather than another.

The Republican Party is a concept incapable of definition and certainly not definable as an "association". More particularly, it is not so definable if any credence at all is to be given to the principle of strict construction of penal statutes. The Hatch Act, 18 U. S. C. 591-612, does not even attempt to define the words "political party". It does at 18 U. S. C. 591 define "political committee"; and, indeed, if the information had charged an offer to a specific political committee such as the Republican National Committee or the Republican State Committee of Pennsylvania or the Republican County Committee of York County, Pennsylvania, it would have set forth a more or less definable object. The words "Republican Party" are suggestive of a concept rather than an entity and that concept depends for its definition on the subjective criteria used by the definer.

Appellant pounces on the words used in Judge Follmer's opinion wherein he defined a "political party" as "a body of persons associated for the purpose of promoting certain views, opinions or principles" (appellant's brief, p. 26). Simply because an undefined or undefinable body of persons is associated to promote certain undefined or undefinable views or principles hardly merits the ascription to that body of the word "association" as used in 1 U. S. C. 1. In matter of fact Judge Follmer was laboring to give some sort of meaning to words which are inherently incapable of being defined.

IV.

THE ACT OF MAKING A POLITICAL CONTRIBUTION IS A SOCIALLY DESIRABLE ONE AND IF THAT ACT IS TO BE PROSCRIBED UNDER ANY CIRCUMSTANCES, SUCH PROSCRIPTION SHOULD BE IN EXPLICIT TERMS, ESPECIALLY IN A PENAL STATUTE.

Chief Justice Marshall wrote in *United States v. Wiltberger*, 5 Wheat. 76, 95 (U. S. 1820):

> "The rule that penal laws are to be construed strictly, is perhaps not much less old than construction itself. It is founded on the tenderness of the laws for rights of individuals; and on the plain principle that the power of punishment is vested in the legislative, not the judicial department."

Mr. Justice Holmes said in *McBoyle v. United States*, 283 U. S. 25, 27 (1931) that it is "reasonable" for penal statutes to be construed to give "fair warning" of "what the law intends to do if a certain line is passed" in language "that the common world will understand." Mr. Justice Douglas affirmed the principle of strict construction in his dissenting opinion in *United States v. A. & P. Trucking Company and Hopla Trucking Company*, 27 U. S. L. Week 4029, 4030 (U. S. Dec. 9, 1958).

The principle of strict construction is peculiarly applicable to the instant case for the instant case involves a crime clearly malum prohibitum and clearly not malum in se. The New York Court of Appeals on this point has said "the citizen is entitled to an unequivocal warning before conduct on his part, which is not malum in se, can be made the occasion of a deprivation of his liberty or property." *People v. Phyfe*, 136 N. Y. 554, 559, 32 N. E. 978, 979 (1893) quoted with approval in *People v. Shakum*,[2]

2. Unanimous opinion by New York Court of Appeals presided over by Chief Judge later Justice Cardozo.

251 N. Y. 107, 114, 167 N. E. 187, 189 (1929). Not only is the crime here not malum in se, but the act of making a political contribution in and of itself is a socially desirable act and one whose proscription, if it is to be proscribed, should be made in clear and explicit language. Furthermore, the principle of strict construction is pertinent to this matter for the crime set forth in 18 U. S. C. 214 does not require as a prerequisite to its taking place that the defendant act with any particular state of mind. There is no requirement that his act be intentional, willful or malicious. The mere completion of the proscribed mechanics, regardless of the state of mind, is sufficient to construct the crime.

Moreover, the specific proscription in 18 U. S. C. 215 of the solicitation or receipt of a political contribution and the absence of a comparable proscription with regard to the offer or promise of a political contribution indicates a legislative intent that political contributions were not to be proscribed by 18 U. S. C. 214.

In the area of politics and political contributions the Congress of the United States has a peculiar expertise. This Court, of course, is aware that every United States Senator and United States Representative is a specialist or at least a practitioner of the art and science of politics. If a body so sophisticated wishes to proscribe a political contribution, it is peculiarly qualified by its background to make that expression explicit. Congress has proscribed political contributions in the Hatch Act in specific and clear terms, but more important, it has also done so in 18 U. S. C. 215 which is pari materia with 18 U. S. C. 214, both having first appeared as a single act, 44 Stat. 918 (1926), Statutes in pari materia are to be construed together. *United States v. Stewart*, 311 U. S. 60, 64 (1940). If Congress had desired to make a similar proscription in 18 U. S. C. 214, it knew well how to do so, and the fact that Congress with its political expertise did not do so indicates an in-

tention that 18 U. S. C. 214 should not be extended to penalize political contributions.

It should be recalled that the act of making a political contribution is not merely a neutral act, but is an act to be encouraged. If a penal statute is to be construed so as to make such an act criminal, no matter for what purpose it is made criminal, then such a construction must be derived from explicit and unambiguous terms. Socially desirable activities should not be permitted to carry penal penalties regardless of the purpose for which they are made criminal without language compelling such a result. The language in the instant case not only does not compel such a result, it precludes such a result.

CONCLUSION.

The judgment below should be affirmed.

Respectfully submitted,

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